

THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR SPECIAL COUNCIL MEETING
OF
TUESDAY, MAY 31, 2005
AT 10:00 A.M.
IN THE COUNCIL CHAMBERS - 12TH FLOOR

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CHRONOLOGY OF THE MEETING:

The meeting was called to order by Mayor Murphy at 10:11 a.m. The meeting was recessed by Mayor Murphy at 10:59 a.m. for the purpose of a break. Mayor Murphy reconvened the meeting at 11:08 a.m. with Council Members Atkins and Madaffer not present. Mayor Murphy recessed the meeting at 12:04 p.m. for the purpose of a break. Mayor Murphy reconvened the meeting at 12:10 p.m. with Council Members Atkins and Madaffer not present. Mayor Murphy recessed the meeting at 12:27 p.m.

ATTENDANCE DURING THE MEETING:

- (M) Mayor Murphy-present
- (1) Council Member Peters-present
- (2) Council Member Zucchet-present
- (3) Council Member Atkins-Excused (By R-300498, no reason given)
- (4) Council Member Young-present
- (5) Council Member Maienschein-present
- (6) Council Member Frye-present
- (7) Council Member Madaffer-Excused (By R-300544, no reason given)
- (8) Council Member Inzunza-present
- Clerk-Lane (er)

FILE LOCATION: MINUTES



ITEM-600:

ROLL CALL

Clerk Lane called the roll:

- (M) Mayor Murphy-present
- (1) Council Member Peters-present
- (2) Council Member Zucchet-present
- (3) Council Member Atkins-not present
- (4) Council Member Young-present
- (5) Council Member Maienschein-present
- (6) Council Member Frye-present
- (7) Council Member Madaffer-not present
- (8) Council Member Inzunza-present



ITEM-601:

Establishing a Schedule of Compensation for Officers And Employees of the City of San Diego for the Fiscal Year 2005-2006.

(See memorandum from the City Attorney dated 5/17/2005 and memorandum to the City Clerk from the City Attorney dated 5/20/2005.)

CITY COUNCIL'S RECOMMENDATION:

Adopt the following ordinance which was introduced on 5/17/2005, Item 330, Subitem-A. (Council voted 6-2. Councilmembers Maienschein and Frye voted nay. Councilmember Inzunza not present.):

(O-2005-129 Revised) ADOPTED AS ORDINANCE O-19384 (New Series)

Establishing a Schedule of Compensation for Officers and Employees of the City of San Diego for the Fiscal Year 2005-2006.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:11 a.m. – 12:27 p.m.)

The following disclosures were read into the record:

Mayor Murphy: Clearly the effect of adoption of this salary ordinance is to make monies available to pay Fiscal Year 2006 salaries of all employees and officers including the Mayor and Members of the City Council and to make monies available to the San Diego City Employees' Retirement System, the retirement system from which all City employees and officers including the Mayor and Members of the City Council, may be able to obtain benefits upon their retirement at some future date, either as members of the General Members Retirement Plan or of the Elected Officials Retirement Plan or of both plans. I also note that like many present and former City officers and employees, that Council Members Atkins, Frye, Inzunza, Madaffer, Maienschein, Zucchet, and I may be entitled to benefits under the retirement system as a result of the purchase of service credits as authorized by prior City Council actions. Even if the Political Reform Act and or Government Code Section 1090 apply to this action by the City Council, then pursuant to applicable exceptions to those statutes neither the Mayor nor any member of the City Council is disqualified from voting on this ordinance.

At Mayor Murphy's request included are his statements from the Council meeting of May 17, 2006, Item 330, Introduction of the Salary Ordinance:

I too am a member of the Legislative Officers Retirement System. Many of us have read City Attorney Casey Gwinn's memorandum dated in 2003 that advised us that the rule of necessity authorized this City Council to vote on Salary Ordinances and Pension Benefits that if this City Council did not vote there's nobody to do it and the City would shut down. And we have been following that advice because it was well-researched and certainly made a lot of sense.

Council Member Peters: Adopts the Mayor's disclosure as his own.

Council Member Zucchet: Adopts Mayor Murphy's and Council Member Inzunza's disclosures as his own.

At Council Member Zucchet's request included are his statements from the Council meeting of May 17, 2006, Item 330, Introduction of the Salary Ordinance:

Let me start with the 1090 issue with respect to this Council. I want to state for the record from my perspective and if my colleagues feel like saying me too or whatever disclosure they want to put on the record they can do as well, but this Council has been put in a unique position because this City Attorney has explicitly refused to advise us individually on whether or not we have as a legal matter of the 1090 concern voting on this package and if that sounds like a criticism, it is a frustration that's not a criticism because I actually think his advice is sound. His advice is you should consult your own attorney and I think that's the appropriate advice in today's environment, and I don't mean that as a back-handed compliment. I'm frustrated by the fact that I can't get the legal advice that I feel that I need to rely on but at the same time under the circumstances I think it is appropriate that Mr. Aguirre give us that advice, which is I'm not given you any advice on that issue and you should consult your own counsel. And that's what he's done. So, I have and other Council Members, but I'll talk for myself here, have been left in the position from having to rely on other attorneys advice other than the City Attorney's and that has come for me personally in three forms. First, the previous written opinions of multiple previous city attorney administrations. Second, to some extent, some current deputy city attorneys in this office who have advised us over the past weeks and months on this issue, and third, our own personal attorneys and other attorneys, as well as, notably, my own research and reading of the City Charter and the State Code that applies. And I want to say a couple of things for the record. First of all I'm a City employee. Second of all, I'm a member of the Retirement System. Because of those two things what we vote on today affects me personally. Now, it's notable that it doesn't affect me very positively seeing as part of the salary ordinance the City Council is doing a wage freeze; City Council is doing a flex benefits freeze and the City Council like every other employee of the City is giving back or is increasing their own retirement contribution by 3 percent. As far as I know there are no retirement benefit increases in this for the City Council. So, it's not like I'm voting on a pay or benefit increase for me, I'm actually voting on a pay or benefit decrease for me. But, that's irrelevant, but I thought I would throw it out there. With respect to 1090, as it has been said here today, and has been said by every attorney that I have, who has been willing to give an opinion on this, has advised that the rule of necessity prevails here; that is that somebody has to vote on these on this (meeting first); somebody has to vote on the salary ordinance; somebody has to conduct contract negotiations and the Charter and the Municipal Code say that the entity that does that is the City Council. And so I have the option of either ignoring that fiduciary responsibility and that duty under the job that I took or in an over abundance of caution, watching out for my own but in today's environment of City Attorney, District Attorney, U.S. Attorney and every other prosecutorial type in this country salivating to some extent on those of us at the City, I have to have the choice of either facing that fear and dealing with it or doing my duty under the Charter and the job I signed up for, and under the best advice I've been able to get out of the people and the Attorneys willing to give me that advice, it is clear to me that we not only can vote on

this but we have an obligation to vote on this. And I just wanted to make that clear along with the disclosure, I didn't think it needed to be made; I think it's self-evident that we are all city employees here. I think it's self-evident that I believe all of us, certainly the majority of us are members of the retirement system. This clearly has a personal impact on us but I believe the rule of necessity prevails and that's the advice that I have relied on and am acting on today and have acted on, for the record.

Council Member Young: Clearly the effect of adoption of the salary ordinance is to make monies available to pay the Fiscal Year 2006 salaries of all City employees and officers including the Mayor and Members of the City Council and to make monies available to the San Diego City Employee's Retirement System, the retirement system from which all City employees and officers may be able to obtain benefits upon their retirement at some future date and the system from which I may some day be able to draw benefits as a member of the General Members Retirement Plan and of the Elected Officers Retirement Plan. Even if the Political Reform Act and or Government Code Section 1090 apply to this section by this City Council, pursuant to applicable exceptions to those statutes, I am not disqualified from voting on this ordinance as a member of the City Council. The clerk is directed to ensure that the official record of these proceedings reflects these disclosures.

Council Member Maienschein: Adopts Mayor Murphy's and Council Member Inzunza's disclosures as his own.

Council Member Frye: Clearly the effect of adoption of the salary ordinance is to make monies available to pay the Fiscal Year 2006 salaries of all City employees and officers including the Mayor and Members of the City Council and to make monies available to the San Diego City Employee's Retirement System, the retirement system from which all City employees and officers may be able to obtain benefits upon their retirement at some future date and the system from which I may some day be able to draw benefits as a member of the General Members Retirement Plan and of the Elected Officers Retirement Plan. Even if the Political Reform Act and or Government Code Section 1090 apply to this section by this City Council, pursuant to applicable exceptions to those statutes, I am not disqualified from voting on this ordinance as a member of the City Council. The Clerk is directed to ensure that the official record of these proceedings reflects these disclosures. In addition, I have asked the retirement administrator, Mr. Grissom, to undo my purchase-of-service credits and to cancel the current contract that allows those purchase-of-service credits and to advise me as to what my options are to roll those funds over into another retirement plan.

As read in the record for Council Member Madaffer: Due to an out of town obligation scheduled before the Special City Council meeting of May 31, 2005 was called, I will not be able to attend the meeting. I will, however, like the record to reflect that the effect of adoption of the salary ordinance is to make monies available to pay the Fiscal Year 2006 salaries of all City employees and officers including the Mayor and Members of the City Council and to make monies available to the San Diego City Employee's Retirement System, the retirement system from which all City employees and officers may be able to obtain benefits upon their retirement at some future date and the system from which I may some day be able to draw benefits as a member of the General Members Retirement Plan and of the Elected Officers Retirement Plan. Even if the Political Reform Act and or Government Code Section 1090 apply to this section by this City Council, pursuant to applicable exceptions to those statutes, I am not disqualified from voting on this ordinance as a member of the City Council. The clerk is directed to ensure that the official record of these proceedings reflects these disclosures and a copy has been sent to City Manager Lamont Ewell and City Attorney Mike Aguirre.

Council Member Inzunza: Adopts Mayor Murphy's disclosure and includes the following: Clearly the effect of adoption of the salary ordinance is to make monies available to pay the Fiscal Year 2006 salaries of all City employees and officers including the Mayor and Members of the City Council and to make monies available to the San Diego City Employee's Retirement System, the retirement system from which all City employees and officers may be able to obtain benefits upon their retirement at some future date and the system from which I may some day be able to draw benefits as a member of the General Members Retirement Plan and of the Elected Officers Retirement Plan. I also note that like many present and former city officers and employees I may be entitled to benefits under the retirement system as a result of my purchase of service credits as authorized by prior City Council actions. Even if the Political Reform Act and or Government Code Section 1090 apply to this section by this City Council, pursuant to applicable exceptions to those statutes, I am not disqualified from voting on this ordinance as a member of the City Council. The clerk is directed to ensure that the official record of these proceedings reflects these disclosures.

**MOTION BY PETERS TO WAIVE ATTORNEY CLIENT PRIVILEGE AND
RECEIVE REPORT FROM THE LAW FIRM OF LUCE, FORWARD, HAMILTON
AND SCRIPPS. Second by Zucchet. Passed by the following vote: Peters-yea, Zucchet-
yea, Atkins-not present, Young-yea, Maienschein-yea, Frye-yea, Madaffer-not present,
Inzunza-yea, Mayor Murphy-yea.**

MOTION BY PETERS TO DISPENSE WITH THE READING AND ADOPT THE ORDINANCE. Second by Zucchet. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-not present, Young-yea, Maienschein-nay, Frye-nay, Madaffer-not present, Inzunza-yea, Mayor Murphy-yea.

ADJOURNMENT:

The meeting was adjourned by Mayor Murphy at 12:27 p.m.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration:12:27 p.m.)